

WFRtDS AMICUS brief regarding constitutionality of assisted suicide in Colombia

To Colombia Constitutional Court

INTRODUCTION

The World Federation of Right to Die Societies (WFRtDS) strives for a world in which people have the right to die with dignity, making their own choices and decisions about the time and manner they want to die.

As a Federation for societies that all share this believe we not only disseminate available information about the issue for those asking for it, but also where requested actively support other parties promoting developments in right to die regulations in their jurisdictions. We can utilize in such situations – using our vast and worldwide network - the experience and expertise of numerous professionals from countries already legalised assisting people to die. WFRtDS for example has been drafting submissions in the past for the legalisation processes of New Zealand, Scotland and the UK, Iceland, Spain and Portugal.

DescLAB Colombia, Laboratorio de Derechos Económicos, Sociales y Culturales, as a valued member of the WFRtDS has asked us to support their initiative to have Medically Assisted Suicide made constitutional in Colombian Constitution in analogy with the constitutionally allowed Euthanasia. A request we readily accepted.

INFORMATION

In countries ¹ or jurisdictions where a form of aid in dying is legalised or regulated, this assistance practically always implies professional, medical involvement. This has led to the acceptance of the use of Medical Aid in Dying (MAiD, Ayuda médica para morir o muerte médicamente asistida) as overarching concept for all forms, including euthanasia and assisted suicide. Although the exact definitions for the first (euthanasia) vary, the general concept of it is that a medical professional (generally a doctor) applies the life ending medication through injection or IV. The second form of MAiD (assisted suicide) stands for a life ending action by the individual involved himself – but always using life ending medication prescribed by and under the responsibility of a doctor.

Another general underlying principle of any form of MAiD in the world is that the act is performed on the explicit request of the individual that wants to have his life terminated because of extreme suffering.

¹ See <https://wfrtds.org/worldmap/>

COLOMBIA

In 1997 the Colombian Constitutional Court made a ground moving decision (C-239/97) decriminalizing euthanasia and making it. The argumentations (following quotes from the decision hereafter in *'italics'*) included aspects regarding the right to life (*'under adequate and worthy conditions'*) without an *'absolute duty to be alive'*; patient's informed consent implying that *'the States duty to protect the right to life yields to the patient's informed consent and his desire to die with dignity'*; extending painful and suffering conditions could be considered *'unworthy'*, and the *'fundamental right to a worthy life involves the right to die with dignity'*. In a second step the decision deals with *'the active subject performing euthanasia'* who *'cannot be held accountable of executing an illegal act, ... this being an act of solidarity, unquestionably not motivated by the desire to carry out a homicide'*. That other to which the consent to die with dignity should be *'unequivocally directed'*, must be *'qualified with adequate and sufficient intellectual competence to take such decisions ... by playing part in this set up as the recipient of acute and reliable information about the first individual's disease, his prognosis and treatment options'*; this all making it clear for the Court to hold that *'the only active subject eligible to perform euthanasia could be a medical doctor'* not only to have professional capability to interpret the situation and available information, but *'to furnish the proper conditions for a dignified death'*.

CONSIDERATIONS

WFRtDS is wondering if not the Colombian Constitution mistakenly left the possibility of assisted suicide by a doctor out of regulating compliance with patient's desires and informed consent because of the consideration that prolonging suffering would constitute inhuman treatment – outlawed by the Constitution – and extending painful conditions in end of life situations to be unworthy, and so out of the conclusion it made on the principle of euthanasia.

Although the case was specifically about euthanasia, it is surprising that the principle of (medically) assisted suicide was not dealt with in the decision C-239/97, while when the Court discussed this issue in 1997, in most – if not all – countries where a form of MAiD was practiced (legally or not) the practice concerned was not euthanasia but medically assisted suicide.

And – following the line of arguments of the court in its decision to make euthanasia constitutional – the same could be reasoned for (medically) assisted suicide, including the issues of right to life, under adequate and worthy conditions; the absence of a duty to be alive; the State's duty to protect the patient's informed consent. And the consideration to have such desire be directed to another individual that is qualified with adequate and sufficient intellectual competence to take the decision. In short, replacing euthanasia with medical assisted suicide in C-239/97, would not make the decision change.

Moreover, WF suggests to accept making such difference between euthanasia and (medically) assisted suicide to be discriminating. If the wording and concept of "suicide" is the problem, why not use the internationally accepted concept of MAiD: the method to terminate suffering on an explicit and voluntary request of

the individual involved, by a medical doctor, who on professional considerations and in cooperation with the patient decides on the best practice: prescription or application.

CONCLUSION

WF asks the Court to consider medically assisted suicide as a form of MAiD like euthanasia, applying the same due care criteria as were formulated in its decision 239/97; to avoid discriminating professional actions – be it prescribing life ending medication or applying it – in such a way that giving the deathly medication intravenously is constitutional and prescribing the (same) medication for oral ingestion by the individual involved as criminal.

WF is aware of the existing legal complexities and understands the consequences in these decisions, but is also convinced through worldwide experiences that ways can be found to make both practices within MAiD being regulated (and later legalised) equally.

WF is always prepared to further explain its argumentation if it is considered necessary by the Colombian Constitutional Court.

We wish you wisdom in your decisions

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